

Ex. A

1 KEKER & VAN NEST LLP
ROBERT A. VAN NEST - # 84065
2 BRIAN L. FERRALL - # 160847
DAVID SILBERT - # 173128
3 MICHAEL S. KWUN - #198945
ASHOK RAMANI - # 200020
4 633 Battery Street
San Francisco, CA 94111-1809
5 Telephone: (415) 391-5400
Email: rvannest@kvn.com;
6 bferrall@kvn.com; dsilbert@kvn.com;
mkwun@kvn.com, aramani@kvn.com

SUSAN CREIGHTON, SBN 135528
SCOTT A. SHER, SBN 190053
WILSON SONSINI GOODRICH & ROSATI
Professional Corporation
1700 K Street NW, Fifth Floor
Washington, D.C., 20006-3817
Telephone: (202) 973-8800
Email: screighton@wsgr.com;
ssher@wsgr.com

7
8 JONATHAN M. JACOBSON, NY SBN 1350495
CHUL PAK (*pro hac vice*)
DAVID H. REICHENBERG (*pro hac vice*)
9 WILSON SONSINI GOODRICH & ROSATI
Professional Corporation
10 1301 Avenue Of The Americas, 40th Floor
New York, NY 10019-6022
11 Telephone: (212) 999-5800
Email: jjacobson@wsgr.com; cpak@wsgr.com;
12 dreichenberg@wsgr.com

13 Attorneys for Defendant ARISTA NETWORKS, INC.

14 UNITED STATES DISTRICT COURT
15
16 NORTHERN DISTRICT OF CALIFORNIA
17 SAN JOSE DIVISION

18 CISCO SYSTEMS, INC.,

19 Plaintiff,

20 v.

21 ARISTA NETWORKS, INC.,

22 Defendant.
23
24
25
26
27
28

Case No. 5:14-cv-05344-BLF (NC)

REPLY IN SUPPORT OF MOTION TO COMPEL

Judge: Hon. Nathanael Cousins

Date Filed: December 5, 2014

Trial Date: November 21, 2016

1 This reply addresses two new arguments in Cisco's opposition to Arista's Motion to
2 Compel, ECF Nos. 278 (Mot.), 312 (Opp.), neither of which has merit.

3 First, Cisco appears to argue that because a plaintiff can assert copying of "non-literal
4 elements" of a work (*id.* at 1:13–14), Cisco need not identify *literal* elements that it asserts Arista
5 copied. If Cisco were only asserting copying of non-literal elements, then perhaps its position
6 would have merit. But Cisco apparently seeks to maintain flexibility to assert copying of literal
7 text also. *See id.* at 1:12–13. If so, it must identify that text in a registered work. Otherwise,
8 there is no way to know whether any asserted literal element was even registered, and if so when,
9 or whether the text was allegedly copied verbatim or loosely paraphrased.

10 Cisco has not disclosed this information. Exhibit A to the Neukom Declaration, ECF Nos.
11 313-1 to 313-6, was attached to an interrogatory response that says that it lists "examples" of
12 copying. ECF No. 306-2 at 9:24–27. If that exhibit identifies *all* literal elements of all registered
13 works that Cisco asserts were copied, Cisco should so state, and fill in the Bates Number citations
14 to the actual registered works, which response can then define the scope of the case. But if it
15 intends to assert at trial that more literal elements were copied, it must identify them—it can't
16 force Arista to guess, especially when the answer is far from clear.¹

17 Second, Cisco's argument that it deposited only excerpts of its source code files with the
18 Copyright Office misses the point. The purpose of the deposit is to disclose "identifying
19 portions" of the registered work to the Copyright Office and the public. 37 C.F.R. §
20 202.20(c)(2)(vii)(A). Arista understands that Cisco is relying on the entire registered work, not
21 just the deposited portion, and Arista is entitled to know what literal elements within those works
22 were allegedly copied. If Cisco cannot supply this basic information at the close of discovery,
23 that should only be because Cisco will not assert at trial that Arista copied any such literal
24 elements. Cisco cannot refuse to identify those elements to Arista in discovery, while
25 simultaneously reserving its right to present them to the jury.

26 ¹ Cisco also cites to Exhibits B and C to its response to Interrogatory 2, ECF Nos. 313-7, 313-8,
27 which simply list a host of Cisco operating systems allegedly associated with each command or
28 mode, but those are lawyer-created charts. They are not evidence that Cisco could use to show
that the command is present in those operating systems or a particular registered product manual,
or that Arista could use to test the accuracy of Cisco's assertions

Dated: June 16, 2016

KEKER & VAN NEST LLP

By: /s/ Brian L. Ferrall
BRIAN L. FERRALL

Attorney for Defendant
ARISTA NETWORKS, INC.